Calendar No. 269

102D CONGRESS
1st Session

SENATE

REPORT
102-185

RECLAMATION STATES EMERGENCY DROUGHT RELIEF ACT OF 1991

OCTOBER 8 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 355]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 355) to provide emergency drought relief to the reclamation States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation States Emergency Drought Relief Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388) and Acts supplementary thereto and amendatory thereof.

(3) The term "Federal Reclamation project" means any project constructed or funded under Federal Reclamation law. Such term includes projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044).

S313-30.

TITLE I—DROUGHT PROGRAM

SEC. 101. ASSISTANCE DURING DROUGHT; WATER PURCHASES.

(a) CONSTRUCTION, MANAGEMENT, AND CONSERVATION.—Consistent with existing contractual arrangements and State law, and without further authorization, the Secretary is authorized to undertake construction, management, and conservation activities that will mitigate, or can be expected to have an effect in mitigating, losses and damages resulting from drought conditions. Any construction activities undertaken pursuant to the authority of this subsection shall be limited to temporary facilities designed to mitigate losses and damages from drought conditions, except that wells drilled to mitigate losses and damages from drought conditions may be permanent facilities.

(b) ASSISTANCE TO WILLING BUYERS AND SELLERS.—In order to minimize losses and damages resulting from drought conditions, the Secretary may provide non-financial assistance to willing buyers in their purchase of available water supplies from willing sellers.

(c) WATER PURCHASES BY BUREAU.—In order to minimize losses and damages resulting from drought conditions, the Secretary may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water. Except with respect to water stored, conveyed or delivered to Federal and State wildlife habitat, the Secretary shall deliver such water pursuant to temporary contracts under section 102; *Provided*, That any such contract shall recover any costs incurred by the Secretary in acquiring such water.

(d) WATER BANKS.—The Secretary is authorized to participate in water banks established by a State or, in the absence of such an established water bank, is authorized to establish intrastate water banks in accordance with State law in order to mitigate losses and damages resulting from drought conditions. The authorities granted to the Secretary by this title providing for the use of Federal Reclamation project facilities and the acquisition and delivery of project and non-project water for use both within and outside an authorized project service area may be used by the Secretary in establishing or participating in water banks.

SEC. 102. AVAILABILITY OF WATER ON A TEMPORARY BASIS.

(a) GENERAL AUTHORITY.—In order to mitigate losses and damages resulting from drought conditions, the Secretary may make available, by temporary contract, project and non-project water, and may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project or non-project water, for use both within and outside an authorized project service area.

(b) SPECIAL PROVISIONS APPLICABLE TO TEMPORARY WATER SUPPLIES PROVIDED UNDER THIS SECTION.—

(1) TEMPORARY SUPPLIES.—Each temporary contract for the supply of water entered into pursuant to this section shall terminate no later than two years from the date of execution or upon a determination by the Secretary that water supply conditions no longer warrant that such contracts remain in effect, whichever occurs first.

(2) OWNERSHIP AND ACREAGE LIMITATIONS.—Lands not subject to Reclamation law that receive temporary irrigation water supplies under temporary contracts under this section shall not become subject to the ownership and acreage limitations or pricing provisions of Federal Reclamation law because of the delivery of such temporary water supplies. Lands that are subject to the ownership and acreage limitations of Federal Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

(3) TREATMENT UNDER RECLAMATION REFORM ACT OF 1982.—No temporary contract entered into by the Secretary under this section shall be treated as a "contract" as that term is used in sections 203(a) and 220 of the Reclamation Reform act of 1982 (Public Law 97-293).

(4) AMENDMENTS OF EXISTING CONTRACTS.—Any amendment to an existing contract to allow a contractor to carry out the provisions of this Act shall not be considered a new and supplemental benefit for purposes of the Reclamation Reform Act of 1982 (Public Law 97-293).

(c) CONTRACT PRICE.—The price for project water, other than water purchased pursuant to section 101(c), delivered under a temporary contract entered into by the Secretary under this section shall be at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appropriate share of capital costs, including interest on municipal and industrial water, except that, for project water delivered to non-project land holdings, the price shall include full cost

(as defined in section 202(3) of the Reclamation Reform Act of 1982 (Public Law 97-293; 96 Stat. 1263; 43 U.S.C. 390bb)). For all contracts entered into by the Secretary under the authority for this title, the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs expended pursuant to this Act shall be at a rate to be determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year preceding the date of execution of the temporary contract or, in the case of existing facilities the rate as authorized for the Federal Reclamation project or, in the absence of such authorized rate, the interest rate as determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction was initiated on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which were neither due nor callable for redemption for fifteen years from date of issue.

(d) FISH AND WILDLIFE.—The Secretary may make water from Federal Reclamation projects and non-project water available on a nonreimbursable basis for the purposes of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions. The Secretary may store and convey project and non-project water for fish and wildlife purposes, and may provide conveyance of any such water for both State and Federal wildlife habitat and for habitat held in private ownership. The Secretary may make available water for these purposes outside the authorized project service area. Use of the Federal storage and conveyance facilities for these purposes shall be on a nonreimbursable basis.

(e) NON-PROJECT WATER.—The Secretary is authorized to store and convey non-project water utilizing Federal Reclamation project facilities for use outside and inside the authorized project service area for municipal and industrial uses, fish and wildlife, and agricultural uses. Except in the case of water supplied for fish and wildlife, which shall be nonreimbursable, the Secretary shall charge the recipients of such water for such use of Federal Reclamation project facilities at a rate established pursuant to section 102(c) of this Act.

(f) RECLAMATION FUND.—The payment of capital costs attributable to the sale of project or non-project water of the use of Federal Reclamation project facilities shall be covered into the Reclamation Fund and be placed to the credit of the project from which such wter or use of such facilities is supplied.

SEC. 103. LOANS.

The Secretary of the Interior is authorized to make loans to water users for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages, including those suffered by fish and wildlife, resulting from drought conditions. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate: *Provided*, That the Secretary shall not approve any loan unless the applicant can demonstrate an ability to repay such loan within the term of the loan: *Provided further*, That for all loans approved by the Secretary under the authority of this section, the interest rate shall be the rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with periods to maturity comparable to the repayment period of the loan. Sections 203(a) and 220 of the Reclamation Reform Act of 1982 and sections 105 and 106 of Public Law 99-546 shall not apply to any contract to repay such loan. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives in writing of any loan which he intends to approve not less than thirty days prior to granting final approval.

SEC. 104. DEFERMENT OF PAYMENTS.

The Secretary is authorized to defer without penalty or additional interest, the payment of any installment of charges including operation and maintenance costs owed to the United States by irrigators as he deems necessary because of financial hardship caused by drought conditions: *Provided*, That any deferment shall be recovered and such recovery may be accomplished by extending the repayment period under the contracting entities' existing contracts with the United States.

SEC. 105. APPLICABLE PERIOD OF DROUGHT PROGRAM.

(a) IN GENERAL.—The programs and authorities established under this title shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States has made a request for temporary drought assistance

and the Secretary has determined that such assistance is merited, or upon the approval of a drought contingency plan as provided in title II of this Act.

(b) COORDINATION WITH BPA.—If a Governor referred to in subsection (a) is the Governor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a).

TITLE II—DROUGHT CONTINGENCY PLANNING

SEC. 201. IDENTIFICATION OF OPPORTUNITIES FOR WATER SUPPLY CONSERVATION, AUGMENTATION AND USE.

The Secretary is authorized to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies available to Federal Reclamation projects and Indian water resource developments in order to be prepared for and better respond to drought conditions. The Secretary is authorized to provide technical assistance to States and to local government entities to assist in the development, construction, and operation of water desalinization projects, including technical assistance for purposes of assessing the technical and economic feasibility of such projects.

SEC. 202. DROUGHT CONTINGENCY PLANS.

The Secretary, acting pursuant to the Federal Reclamation laws, utilizing the resources of the Department of the Interior, and in consultation with other appropriate Federal and State officials, Indian tribes, public, private, and local entities, is authorized to prepare or participate in the preparation of cooperative drought contingency plans (hereinafter in this title referred to as "contingency plans") for the prevention or mitigation of adverse effects of drought conditions.

SEC. 203. PLAN ELEMENTS.

(a) PLAN PROVISIONS.—Elements of the contingency plans prepared pursuant to section 202 may include, but are not limited to, any or all of the following:

(1) One or more water banks whereby the Secretary and project and nonproject water users may buy, sell, and store water consistent with State law, including participation by the Secretary in water banks established by the State.

(2) Appropriate water conservation actions.

(3) Water transfers to serve users inside or outside authorized Federal Reclamation project service areas in order to mitigate the effects of drought and which are consistent with Federal and State law.

(4) Use of Federal Reclamation project facilities to store and convey nonproject water for agricultural, municipal and industrial, fish and wildlife, or other uses both inside and outside an authorized Federal Reclamation project service area.

(5) Use of water from dead or inactive reservoir storage or increased use of ground water resources for temporary water supplies.

(6) Water supplies for fish and wildlife resources.

(7) Minor structural actions.

(b) FEDERAL RECLAMATION PROJECTS.—Each contingency plan shall identify the following two types of plan elements related to Federal Reclamation projects:

(1) those plan elements which pertain exclusively to the responsibilities and obligations of the Secretary pursuant to Federal Reclamation law and the responsibilities and obligations of the Secretary for a specific Federal Reclamation project; and

(2) those plan elements that pertain to projects, purposes, or activities not constructed, financed, or otherwise governed by the Federal Reclamation law.

(c) COMPLIANCE WITH LAW.—The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Development Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law.

(d) REVIEW.—The contingency plans shall include provisions for periodic review to assure the adequacy of the contingency plan to respond to current conditions, and such plans may be modified accordingly.

SEC. 204. RECOMMENDATIONS.

(a) APPROVAL.—The Secretary shall submit each plan prepared pursuant to section 202 to the Congress, together with the Secretary's recommendations, including recommendations for authorizing legislation, if needed.

(b) PACIFIC NORTHWEST REGION.—A contingency plan under subsection (a) for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration.

SEC. 205. RECLAMATION DROUGHT RESPONSE FUND.

The Secretary shall undertake a study of the need, if any, to establish a Reclamation Drought Response Fund to be available for defraying those expenses which the Secretary determines necessary to implement plans prepared under section 202 and to make loans for nonstructural and minor structural activities for the prevention or mitigation of the adverse effects of drought.

SEC. 206. TECHNICAL ASSISTANCE AND TRANSFER OF PRECIPITATION MANAGEMENT TECHNOLOGY.

(a) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide technical assistance for drought contingency planning in any of the States not identified in section 1 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), and the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(b) TECHNOLOGY TRANSFER PROGRAM.—The Secretary is authorized to conduct a Precipitation Management Technology Transfer Program to help alleviate problems caused by precipitation variability and droughts in the West, as part of a balanced long-term water resources development and management program. In consultation with State and local water, hydropower, water quality and instream flow interests, areas shall be selected for conducting cost-shared field studies to validate and quantify the potential for appropriate precipitation management technology to augment stream flows. Validated technologies shall be transferred to non-Federal interests for operational implementation.

TITLE III—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in section 303 of this Act (relating to temperature control devices at Shasta Dam, California), there is authorized to be appropriated not more than $90,000,000 in total for fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 302. AUTHORITY OF SECRETARY.

The Secretary is authorized to perform any and all acts and to promulgate such regulations as may be necessary and appropriate for the purpose of implementing this Act. In carrying out the authorities under this Act, the Secretary shall give specific consideration to the needs of fish and wildlife, together with other project purposes, and shall consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations.

SEC. 303. TEMPERATURE CONTROL AT SHASTA DAM, CENTRAL VALLEY PROJECT.

The Secretary is authorized to complete the design and specifications for construction of a device to control the temperature of water releases from Shasta Dam, Central Valley Project, California, and to construct facilities needed to attach such device to the dam. There is authorized to be appropriated to carry out the authority of this section, not more than $12,000,000.

SEC. 304. CONSISTENCY WITH STATE LAW.

All actions taken pursuant to this Act pertaining to the diversion, storage, use, or transfer of water shall be in conformity with State law.

SEC. 305. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities, pursuant to the Act of February 21, 1911 (43 U.S.C. 523), for the exchange, impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

SEC. 306. REPORT.

There shall be included as part of the President's annual budget submittal to the Congress a detailed report on past and proposed expenditures and accomplishments under this Act.

SEC. 307. FEDERAL RECLAMATION LAWS.

This Act shall constitute a supplement to the Federal Reclamation laws.

PURPOSE OF THE MEASURE

The primary purpose of H.R. 355 is to ensure that the Secretary of the Interior has adequate authorities, both permanent and temporary, to plan for and respond to drought which affect the water supply used by Reclamation projects and relied upon by project beneficiaries. H.R. 355 also provides the Secretary with authority to address drought-caused problems affecting other water users, including fish and wildlife.

The temporary authority contained in this Act provides the Secretary with the flexibility to purchase, store and convey water using Bureau of Reclamation facilities, to make water available where it is most needed. All other provisions in H.R. 355 are intended to be permanent in nature.

The Secretary is granted broad, permanent authority to undertake construction, management, and conservation activities, including drilling wells, that will mitigate losses and damages resulting from drought conditions. This Act grants the Secretary the authority to act as a clearinghouse to bring together willing sellers and buyers of water; participate in water banks set up by States or, in the absence of such a bank, establish intrastate water banks; aid in the preparation of drought contingency plans; provide loans to undertake construction, management, conservation activities, or to purchase and transport water to mitigate drought-related losses and damages; and defer payments owed to the United States by irrigators suffering drought-induced financial hardship. H.R. 355 further clarifies the Secretary's authority and responsibility to consider the needs of fish and wildlife and other water users as needed to address drought conditions.

BACKGROUND AND NEED

In 1976 and 1977, drought conditions occurred in widespread portions of the United States. The Congress responded by passing temporary emergency drought legislation, the "Emergency Drought Relief Act of 1977" (Public Law 95–18). The Secretary of the Interior was granted emergency powers for 1 year to study opportunities for increased water conservation and to undertake construction, management and conservation activities expected to mitigate damages to Federal reclamation and Indian irrigation projects. Interest-free loans were available to irrigators for these activities or water purchased and transported for the same purposes.

The Act authorized the Secretary to assist willing buyers and sellers in their purchase of water for redistribution to irrigators. Deferral by project irrigators of 1977 installments on obligations under a Federal reclamation contract was permissible if the Secretary found that extreme drought conditions had caused financial hardship.

Other provisions included a $10 million set aside for fish and wildlife mitigation necessitated by the drought and a waiver of the provisions of the National Environmental Policy Act of 1969.

A decade later, the Congress was asked again to respond to a drought emergency and to the economic, social, and environmental hardships that followed. Title IV, Subtitle B of the resulting legislation, the "Disaster Assistance Act of 1988" (Pub. L. 100–387), is the "Reclamation States Drought Assistance Act of 1988."

The 1988 legislation similarly granted the Secretary of the Interior emergency powers for one year to study opportunities for increased water conservation and to undertake construction, management and conservation activities expected to mitigate damages to Federal reclamation projects and Indian water resource developments. Water users could obtain loans from a $25 million authorization for these purposes.

The Secretary was authorized to assist willing buyers and sellers in their purchase of water and redistribute it based on priorities consistent with State law. The Secretary could also use water or canal capacity at existing Federal reclamation projects to mitigate damages caused by the 1987–89 drought.

Other key provisions of the bill included the amendment of section 203 of the Flood Control Act of 1962 to make available to the Oakdale and South San Joaquin Irrigation Districts the unallocated storage carried over from the previous year, and the authorization of a demonstration project at Shasta Dam to determine the effectiveness of temperature control devices with authorized funds of $5,500,000.

Most of the Western States continue to be affected by drought conditions. California and Nevada are in their 5th straight year of drought, while other parts of the West are in their 4th year of drought.

Stream flow forecasts are below average for most river basins and remain less than 50 percent of average in river basins in Nevada and California. Isolated instances of above normal forecasts are found in the northern portions of the Columbia River Basin and in the Rio Grande and San Juan drainages in New Mexico and Colorado.

While substantial precipitation occurred in California in March and in other parts of the West in April, runoff forecasts and reservoir storage remain below normal in most areas. Reservoir storage on Reclamation projects ranges from less than 50 percent of average in Oregon, Nevada, and California watersheds to well above average in the Columbia Basin. Major storage systems in California are near 60 percent of average as a result of the March precipitation.

In many Western areas, ground water basins have been severely overdrafted during the past several years of drought. This increases the potential for land subsidence, sea water intrusion, and other water quality problems.

California has been one of the areas most severely affected by the prolonged drought. The Bureau of Reclamation provides for about one-third of California's total water needs through the Central Valley Project (CVP) and the Colorado River System. While the precipitation in much of California's principal watershed areas

for March was just over 200 percent of average for the month, it fell far short of ending the drought. The precipitation did increase the water supply forecast for the northern portions of the CVP by 2.2 million acre-feet, but still left a shortage of over 3 million acre-feet required to meet normal demands.

During the first 4 drought years (1987–90) in the State of California, the Bureau of Reclamation's CVP and the State Water Project (SWP) met all urban water supply requests. All agricultural demands were met through 1989. In 1990, the SWP cut deliveries to agricultural contractors by 50 percent and the CVP reduced its deliveries by 25 to 50 percent to its agricultural water users.

The Bureau of Reclamation announced on February 14 it would deliver only 25 percent of normal water deliveries to its agricultural contractors. The only exception was for two special categories of water contractors, the Sacramento River water right contractors and the San Joaquin exchange contractors, who received 75 percent of their contractual entitlements, a figure near normal actual deliveries. Under this plan, CVP urban water contractors received between 25 percent and 50 percent of normal CVP water deliveries.

The State of California reduced the delivery of water from the SWP even more stringently. As of February 4, deliveries of water to agricultural contractors were suspended until further notice. Urban customers received as little as 10 percent of normal deliveries. As a result, many urban areas throughout the State of California have implemented ambitious water conservation programs, both voluntary and mandatory. For example, the City of Santa Barbara cut water use by more than 40 percent during the past year. During 1991, the Metropolitan Water District of Southern California, the largest water district in the State, implemented Phase V of its incremental interruption and conservation plan which is designed to achieve a 31-percent reduction in water deliveries to its 27 member public water agencies.

Municipal, industrial, and agricultural water users continue to seek alternative sources of water to meet their 1991 needs, with varying success. Many agricultural users have turned to increased groundwater pumping, where groundwater is available, while others have cut back planting, laid land fallow, or switched their crops to less water-consumptive crops or sought to transfer their water to other users.

Statewide fish and wildlife resources dependent on aquatic habitats are undergoing severe stress, according to the "Report of the Governor's Drought Action Team." Substantial reductions in stream flow requirements below dams have been in effect for the past 4 years. Streams dependent on unregulated flow are at seriously low levels. Forage for wildlife is very limited. Natural wetlands have dried up and managed wetlands will receive only very limited allocations for 1991. The situation is similar elsewhere in the Reclamation west.

As noted in the hearing before the Subcommittee on Water and Power on May 15, 1991, the Bureau of Reclamation does not have a standard definition of drought. This is primarily because drought conditions vary from region to region; what may be an abnormally low amount of rainfall or runoff in one area of the country may be unusually high for another.

In determining the scope of drought conditions for projects in the seventeen Western States, however, the Bureau of Reclamation distinguishes between two situations: (1) a "drought" and (2) a situation where, even in normal years, the available water supply is too small to meet all existing demands. In the first situation in relation to Reclamation projects, a drought occurs when precipitation and, thus, storage is too low to meet the demands of the authorized purposes and contractual obligations of the project. Those purposes and contractual obligations provide a well-defined limit to the total project obligations to provide water supplies.

The second situation occurs when demand for water exceeds or grows beyond that for which the project was authorized, designed, and constructed. Reclamation projects are designed and constructed based upon historic precipitation in the drainage basin and the anticipated water demands of those project purposes as authorized by the Congress. Contractual obligations of the project are then based upon a "normal" or average water supply, with anomalies in precipitation factored into the design of each project to accommodate years of low precipitation. During extremely low precipitation years or during consecutive years of low precipitation, however, water supplies may not be available to meet even the minimum levels of demand. Of primary concern during these times are the economic, environmental, and social impacts of water shortages to water users, the surrounding communities, and fish and wildlife resources.

H.R. 355 was introduced in the House of Representatives on January 3, 1991, by Mr. Lehman, on behalf of himself and others. On March 15, 1991, the Committee on Interior and Insular Affairs met in open session and ordered H.R. 355 favorably reported as amended by a voice vote.

H.R. 355 was passed by the House of Representatives as amended on March 31, 1991, by a Yea-Nay vote, 387–23. H.R. 355 was received by the Senate on April 11, 1991, and was referred to the Committee on Energy and Natural Resources.

On February 7, 1991, on behalf of himself and Senator Cranston, Senator Seymour introduced S. 404, a bill to authorize the Secretary of the Interior to enter into contracts pursuant to the Warren Act for domestic, municipal, fish and wildlife, and other beneficial purposes. Similar legislation had passed the Senate during the 101st Congress, but was not enacted into law. A bill substantially similar to H.R. 355, S. 586, the Reclamation Drought Act of 1991, was introduced by Senator Bradley on March 7, 1991, by request on behalf of the Administration. Senator Seymour also introduced a substantially similar bill, S. 711, the Reclamation Drought Relief Act of 1991, on March 20, 1991. S. 404, S. 586, and S. 711 were all referred to the Committee on Energy and Natural Resources.

On May 15, 1991, the Subcommittee on Water and Power held a hearing on H.R. 355, S. 404, S. 586, and S. 711. At the business meeting on September 26, 1991, the Senate Committee on Energy and Natural Resources ordered H.R. 355, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 26, 1991, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 355, if amended as described herein.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers [1]	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Wirth	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone [1]	
Mr. Wallop	
Mr. Hatfield [1]	
Mr. Domenici [1]	
Mr. Murkowski [1]	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn [1]	

[1] Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

The short title of this bill is the "Reclamation States Emergency Drought Relief Act of 1991".

Sec. 2. Definitions

This section sets forth the definitions of terms used in the Act.

Title I—Drought Program

Sec. 101. Assistance During Drought; Water Purchases

The Secretary of the Interior is granted broad, permanent authority to undertake construction, management, and conservation activities that will mitigate losses and damages resulting from drought in section 101(a). The Committee intends that the Secretary's broad authority include, for example, the construction of temporary barriers of berms such as those already in place on the Sacramento River to prevent salt water intrusion into the Sacramento-San Joaquin Delta or appropriate participation in State activities.

Construction activities are limited to temporary facilities, with the exception that wells drilled to mitigate or alleviate the impact

of drought may be permanent facilities. It is, for example, the Committee's expectation that wells drilled to provide wildlife refuges with water during the drought will remain as permanent facilities to be available to serve those refuges during a future drought.

Section 101(b) provides the Secretary with authority to provide non-financial technical assistance to willing buyers and sellers in their purchase of water. As in the past, the Secretary will most likely serve as a clearinghouse to bring willing buyers and sellers together and to help in the delivery of water supplies. The Committee wishes to emphasize that the authority provided in this subsection, unlike the loan and deferment authority provided elsewhere, is limited to non-financial assistance.

Section 101(c) authorizes the Secretary to purchase water directly from willing sellers. The Secretary is authorized to then sell this water to willing buyers by temporary contracts pursuant to section 102.

It is the Committee's intent that, in addition to delivering water pursuant to the temporary contracts, the Secretary will also be able to store, deliver or convey such water to wildlife habitat. The Committee expects that any temporary contracts for the delivery of such water, except contracts for fish and wildlife habitat, will recover any costs incurred by the Secretary in acquiring such water. Additional costs may also be applicable, either for carriage or pursuant to a project repayment contract, but, except for acquisition for habitat, all acquisition costs are to be recovered.

The Secretary is granted authority under section 101(d) to participate in State-created water banks. In the absence of an established State water bank, the Secretary may establish an intrastate water bank using Federal facilities. The Committee emphasizes that the authority to establish a water bank is limited to intrastate and may not be interstate. Furthermore, the authority is subject to applicable State law. If the laws of the particular State do not permit such a water bank, then the Secretary will not be able to establish one.

Sec. 102. Availability of Water on a Temporary Basis

Section 102(a) authorizes the Secretary to make water available by temporary 2-year contract and to use Federal Reclamation water project facilities to store and convey both project and non-project water. It further permits the use of such water outside the authorized project service area. This authority permits the Secretary to use water and facilities to their fullest capacity in alleviating impacts of the drought. It also allows water and facilities to be used for a much broader range of purposes than might be authorized for a particular Reclamation project and facilitates the temporary transfer of water from one use to another.

Section 102(b) makes it clear that lands not subject to Reclamation law shall not become subject to ownership and acreage limitations and pricing provisions of such law by receiving temporary water supplies under this Act. This provision is consistent with the Committee's intent that non-project recipients of water under this Act should receive none of the benefits associated with normal Reclamation project operations but will also not be subject to normal limitations.

Under section 102(c), the price for project water, other than water purchased pursuant to section 101(c), delivered under temporary contact under this Act must be sufficient to cover Federal operation and maintenance costs and administrative costs together with an appropriate share of capital costs. The price for project water delivered to non-project water users, other than fish and wildlife, shall include all costs (including interest on municipal and industrial deliveries) associated with acquisition, storage, conveyance, and delivery, including full cost as defined by the Reclamation Reform Act of 1982 for deliveries to irrigators. The House-passed measure had provided a 960-acre exemption from full cost for non-project irrigators. The Committee believes that would create an administrative nightmare for the Secretary and that the application of full cost to all deliveries will provide greater certainty and be consistent with the temporary nature of such deliveries.

Section 102(d) authorizes the Secretary to make water available for State and Federal wildlife habitat and for private habitat on a nonreimbursable basis. The Secretary may store and convey such water and make it available outside the authorized project service area. This language ensures that the Secretary has clear authority to provide water for the purpose of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions.

The intent of this section is to enable the Secretary to exercise his authority for the benefit of fish and wildlife resources impacted by drought conditions, whether within or without a project's authorized service area, in the same manner as he could respond to communities and individuals. The Committee understands that severe and continuing drought conditions will tax the ability of projects to meet their authorized purposes, including mitigation. The Committee also understands that, in certain instances, the carryover storage of projects itself helps to mitigate the impact of multi-year drought conditions on fish and wildlife as well as project contractors which would occur in the absence of such storage. The Committee expects the Secretary to exercise his discretion under this subsection, together with his authorities under other provisions of this Act, in a manner which will provide the greatest public benefit in alleviating drought impacts.

Section 102(e) sets out the Committee's intent that the costs to the Federal Government of making non-project water available, under temporary contracts, shall be repaid by the recipients of such water.

Section 102(f) requires that any recovery of capital costs from the sale of project water or the use of Federal Reclamation project facilities will be earmarked for the Reclamation Fund and credited to the individual project where the water came from or the facilities that were used. The Committee intends that revenues from the sale of non-project water to non-project buyers where a charge was not imposed which includes repayment of an allocable construction charge be covered into the general fund for the U.S. Treasury.

Sec. 103. Loans

This section authorizes the Secretary to make emergency loans available to water users for construction, management or conservation activities, or for the purchase or movement of water, to mitigate losses or damages, including those suffered by fish and wildlife, caused by drought. The Secretary has broad discretion to set the terms and conditions of the loan, with the requirements that the water user demonstrate an ability to repay the loan within the terms of the loan contract and that the Secretary of the Treasury determine the rate of interest on the loan. The section requires the Secretary to notify the Committee at least 30 days prior to granting final approval. The intent is to notify the Committee, not delay loan approval. The Committee does not want notification of every loan request, but rather timely notice of those loans which the Secretary intends to approve, indicating who is the recipient of the loan, the purpose and amount of the loan, and a description of other loans make to the recipient under this section.

Because funding for loans may be limited, the Committee expects the Secretary to use the authority granted by this section to provide loans to irrigators, rural water users, fish and wildlife conservation interests, and other who are directly and significantly harmed, or threatened with harm by drought. For example, if drought conditions cause a reservoir's level to drop significantly, this section would authorize the Secretary to provide a loan to an individual or entity which draws its water from that reservoir in order to pay some or all of the costs of extending or relocating the individual or entity's water intake pipe. Similarly, this section would authorize the Secretary to provide a loan to conservation organizations to fund the acquisition of water supplies for wildlife habitat threatened by drought conditions.

Sec. 104. Deferment of Payments

During periods of drought, many irrigators may have their water deliveries from Reclamation projects substantially reduced. This circumstance may place a significant financial hardship on such farmers. As a practical matter, most irrigation districts rely on the sale of water for the revenues to repay contract obligations. When the Secretary is unable to deliver water, it is not surprising that the districts will have difficulty in meeting contract obligations. Recognizing this situation, the Committee has included language relating to deferment of payments similar to authorities contained in the 1977 "Emergency Drought Act" (Pub. L. 95-18).

This section authorizes the Secretary to defer payments owed to the United States by irrigators, including operations and maintenance charges, which the Secretary determines are facing severe economic hardship as a result of drought conditions. However, this section does not amend, affect, or relieve in any way the repayment obligations which may apply for Central Valley Project contractors under Public Law 99-546.

The committee does not intend that this authority be exercised other than in circumstances where as a result of drought conditions, the Secretary is unable to deliver water as contemplated under a contract with an irrigation district and where that inabil-

ity to make a delivery would result in a severe economic hardship. This section does not provide for forgiveness, but only deferral until water deliveries begin again. The Committee also understands that the Secretary could use this authority during a severe drought as an inducement to a district to forgo water deliveries so that the Secretary could deliver such water under temporary contract to others. In the case of either municipal and industrial deliveries or non-project agricultural deliveries, such a contract would entail increased Federal revenues.

Sec. 105. Applicable Period of Drought Program

The programs and authorities authorized under title I of this Act become operative in any Reclamation State only after the Governor has made a request for temporary drought assistance and the Secretary has determined that such assistance is merited, or upon the approval of a drought contingency plan as provided in title II.

Title II—Drought Contingency Planning

Sec. 201. Identification of Opportunities for Water Supply Conservation, Augmentation and Use

This section authorizes the Secretary to work under current Federal Reclamation law and this Act, to consult with appropriate Federal, State, Indian tribal, public, private and local officials to prepare, or participate in the preparation of, cooperative drought contingency plans to prevent or mitigate the adverse impact of future drought conditions. The Secretary is specifically authorized to provide technical assistance to States and local governments to assist in the development, construction and operation of water desalination projects.

This bill grants the Secretary permanent authority to develop cooperative drought response contingency plans. The Secretary is provided with this clear and specific authority in order to develop drought response contingency plans on a prospective basis in cooperation with the States and other interests. Having "on-the-shelf" contingency plans in place will allow the Federal Government and the States cooperatively to anticipate drought conditions and act in a timely fashion to prevent, or at least mitigate, the adverse impacts drought conditions may have on environmental resources and water users.

Sec. 202. Drought Contingency Plans

Section 203(a) lists elements that may be included in the cooperative drought contingency plans. This list of possible actions and elements is not intended to be all inclusive.

Section 203(b) requires that the drought contingency plans identify two types of plan elements: (1) those pertaining exclusively to obligations and responsibilities of the Secretary for Federal Reclamation law in general and for specific Reclamation projects; and (2) those pertaining to projects, proposes or activities which are not constructed, financed or otherwise governed by Federal Reclamation law.

In the House-passed Act section 203(c), each contingency plan was required to define levels of drought that would trigger the im-

plementation of the plan elements. This provision was deleted for possibly restricting the Secretary's ability to respond to conditions which may have been unforeseen in the preparation of the plan.

Section 203(c) requires that all the elements of the contingency plans and the plans themselves comply with all applicable Federal law, including the National Environmental Policy Act of 1969 (NEPA), the Fish and Wildlife Coordination Act, and be in accord with all applicable State laws.

Section 203(d) requires that the contingency plans be reviewed periodically to be sure the provisions adequately respond to current conditions or are modified accordingly.

Section 204 requires the Secretary to submit to Congress each cooperative drought contingency plan developed under section 202. Each submission shall include any recommendations by the Secretary, including recommendations for any additional authorizing legislation that may be needed to carry out contingency plans. This title does not provide specifically for either Congressional or Secretarial approval of plans. Clearly the Secretary would need to approve any aspects of a plan which would involve the exercise of federal authorities which lie within the discretion of the Secretary. Similarly, those aspects of a plan which would require either authorization or appropriation would be ineffective until Congress enacts the necessary legislation. The Committee expects that many plans will address the regional aspects of drought, including the impact of drought on non-project communities, individuals, and the environment, and therefore the Secretary should participate in, but not dictate the contents of such a plan.

Section 205 directs the Secretary to study the need for establishment of a Reclamation Drought Response Fund to help defray Secretarial implementation of drought response activities pursuant to the drought contingency plans and to make loans for nonstructural and minor structural activities for prevention or mitigation of adverse effects of drought.

Section 206(a) authorizes the Secretary to provide technical drought contingency planning assistance to other than traditional Western Reclamation States identified in the Reclamation Act of 1902, including technical assistance to the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. The Committee notes that the Secretary already has open-ended authorization to provide technical assistance to the territories and could probably enter into cooperative agreements with the States absent this provision.

Section 206(b) authorizes the Secretary to conduct, as part of a balanced long-term water resources development and management program (and thus a potential part of drought contingency planning), a Precipitation Management Technology Transfer Program to help augment water supplies in the West. It is intended that the Secretary will make use of any existing scientific and other expertise and accumulated data within the Bureau of Reclamation and other agencies for this purpose. The Committee intends that any precipitation management technology field studies or demonstra-

tion performed under this authority must be cost-shared, with at least 50 percent of the cost to be provided by the States.

Title III—General and Miscellaneous Provisions

Sec. 301. Authorization of Appropriations

There is a $90 million cap on appropriations for the implementation of the authorities granted under this Act, including the issuance of loans. Funding authority is provided for fiscal years 1992–96 only. The authorization of appropriations under section 301 does not include the specific authorization of $12 million in section 303 for the design and certain preliminary construction work associated with the temperature control device at Shasta Dam, Central Valley Project, California.

Sec. 302. Authority of Secretary

This section sets forth the general authority of the Secretary to implement the provisions of H.R. 355, and authorizes the Secretary to promulgate regulations as needed. The Committee expects that regulations will be promulgated in a timely manner, consistent with the intent of the Committee that actions taken pursuant to H.R. 355 be accomplished promptly so that the effects of drought may be mitigated as soon as possible.

In carrying out the authorities granted under this Act, the Secretary is required to give specific consideration to the needs of fish and wildlife, together with other project purposes, and must consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations. The Committee recognizes that, during drought periods, water supplies may not be adequate to meet all needs. It is the Committee's intent that fish and wildlife needs not be ignored and that the Secretary evaluate all potential impacts of drought conditions, on project and non-project water users and fish and wildlife and exercise his discretion to provide the maximum benefit given limited resources.

Sec. 303. Temperature Control at Shasta Dam, Central Valley Project

The Secretary has general authority to conduct studies of the feasibility of the construction of facilities to mitigate fish and wildlife losses and damages resulting from the operation of project facilities. Money was appropriated in the 101st Congress to fund a study by the Secretary into the design of a device to control the temperature of water released from Shasta Dam needed to improve the survival of fish downstream of the dam.

Under current conditions, the design of the dam allows for cold water releases from the bottom of the reservoir, but only if the hydroelectric generation facilities are bypassed. Construction of a specially-designed temperature control device will allow for the release of cold water from the dam without bypassing power generation facilities.

Section 303 authorizes the Secretary to complete the design and specifications for construction of the temperature control device at

Shasta Dam, and to construct facilities needed to attach the device to the dam. It is the Committee's intent that construction at Shasta should proceed while reservoir levels are very low, allowing for easier (and perhaps less costly) construction of the necessary foundation.

The $12 million authorized for appropriation in section 303 is in addition to the $90 million authorization in section 301.

The Committee recognizes that completion of the construction and attachment of the temperature control device may cost as much as four times the amount authorized in section 303. It is the Committee's intent that the $12 million provide the Bureau of Reclamation with means with which to commence construction while reservoir levels are very low. It will be necessary to authorize additional funds in succeeding years to actually complete the construction and attachment of the device.

Sec. 304. Consistency With State Law

This section requires that all actions taken pursuant to this Act pertaining to the purchase, transfer, and allocation of water shall be in conformity with applicable State law.

Sec. 305. Excess Storage and Carrying Capacity

A 1911 provision of Federal Reclamation law, commonly known as the Warren Act, in pertinent part, authorizes the Secretary to contract with irrigation districts to use storage and conveyance capacity at Reclamation facilities which is surplus to project needs for storage and conveyance of non-project water for agriculture uses.

Reclamation projects now benefit a variety of purposes, including municipal and industrial water uses, recreation, fish and wildlife, water quality, and hydropower generation, as well as the traditional irrigation farmer.

Because of the limitations in the original Warren Act, the operational flexibility and efficiencies facilitated by Warren Act contracts are not available to contemporary project purposes and related needs. This section will expand the purposes for which Warren Act contracts may be executed and broadens the definition under which entities may qualify as Warren Act contractors. This section, however, applies only to the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

Sec. 306. Report

This section requires that the Secretary submit a detailed report on past and proposed expenditures and accomplishments under this Act as part of the President's annual budget submittal to Congress.

Section 104 of the House-passed Act required the Secretary to provide Congress with an assessment of the Environmental impacts of the implementation of drought-related activities or projects authorized under this title on existing lawful uses of water and on fish and wildlife resources or other instream beneficial uses. The requirement for an environmental report in addition to the expenditures and accomplishments report was deleted with the understanding that it is the Committee's intent that the National Environmental Policy Act of 1969 and all other Federal environmental

laws continue to apply under this legislation, but also with the understanding that given the emergency nature of these authorities, the temporary nature of most activities, and the limited impact of those actions, the current regulations. promulgated by the Council on Environmental Quality would limit any delay as a result of NEPA.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 355. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 355, as ordered reported.

EXECUTIVE COMMUNICATIONS

The Committee on Energy and Natural Resources did not request formal views on H.R. 355 from Executive agencies. However, the Bureau of Reclamation and the Fish and Wildlife Service of the U.S. Department of the Interior, and the U.S. Department of Agriculture each submitted written testimony on H.R. 355, S. 404, S. 586, and S. 711 at the Subcommittee on Water and Power hearing on May 15, 1991. Those statements are reprinted here.

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Thank you, Mr. Chairman. I appreciate the opportunity to appear at this hearing to present the views of the Department of the Interior on S. 586, a bill to provide authority to the Secretary of the Interior to reduce the impacts of drought conditions, and for other purposes; S. 404, to authorize the Secretary of the Interior to enter into contracts pursuant to the Warren Act for domestic, municipal, fish and wildlife, and other beneficial purposes, and for other purposes; S. 711, to authorize the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions, and for other purposes; and H.R. 355, an act to provide emergency drought relief to the Reclamation States, and for other purposes.

The Department supports the enactment of S. 586 and urges your Committee to take the necessary action to report the bill as expeditiously as possible. I would like to thank the Chairman for introducing S. 586 on behalf of the Administration. In addition, I

would like to thank Senator Seymour and other members of the Congress for taking the initiative to address means for helping to mitigate the adverse effects of drought.

As you know, a number of areas in the West are faced with critical drought conditions. Enactment of S. 586 would help alleviate some of the problems caused by the lack of adequate water supplies.

To underscore a sense of urgency, I would like to provide the Committee with an update of drought conditions in the West in general and in California in particular.

Most of the Western States continue to be affected by drought conditions. California and Nevada are in their fifth straight year of drought, while other parts of the East are in their fourth year of drought.

Stream flow forecasts are below average for most river basins and remain less than 50 percent of average in river basins in Nevada and California. Isolated instances of above normal forecasts are found in the northern portions of the Columbia River Basin and in the Rio Grande and San Juan drainages in New Mexico and Colorado.

While substantial precipitation occurred in California in March and in other parts of the West in April, runoff forecasts and reservoir storage remain below normal in most areas. Reservoir storage on Reclamation projects ranges from less than 50 percent of average in Oregon, Nevada, and California watersheds to well above average in the Columbia Basin. Major storage systems in California are near 60 percent of average as a result of the March precipitation.

In many Western areas, ground water basins have been severely overdrafted during the past several years of drought. This increases the potential for land subsidence, sea water intrusion, and other water quality problems.

California has been one of the areas most severely affected by the prolonged drought. The Bureau of Reclamation provides for about one-third of California's total water needs through the Central Valley Project (CVP) and the Colorado River System. While the precipitation in much of California's principal watershed areas for March was just over 200 percent of average for the month, it fell far short of ending the drought. The precipitation did increase the water supply forecast for the northern portions of the CVP by 2.2 million acre-feet, but still left a shortage of over 3 million acre-feet required to meet normal demands.

The May 1991 CVP water supply forecast indicates a September, 1991, carryover of approximately 3 million acre-feet for the 1992 water year which is 1 million acre-feet less than last year's carryover. Projected 1991 CVP water deliveries are 3.4 million acre-feet. The projected supply and project operations provide for all formal fishery release requirements and water quality standards for the Sacramento-San Joaquin Delta be met. Included in the forecasts are operational considerations to provide protection to two listed species: the threatened winter-run chinook salmon and the endangered bald eagle. Allocations to CVP agricultural and urban water service contractors will remain the same as announced on February 14, and March 15, with a 25 percent supply for agricultural

water contractors and between a 25 and 50 percent supply for urban water contractors, and a 75 percent supply for Sacramento River water rights contractors and San Joaquin exchange contractors.

The March precipitation also improved our ability to deliver "hardship" water. The Bureau is now considering requests for hardship water for reducing drought impacts to fish and waterfowl as well as urban and agricultural users within the CVP.

With regard to California's other major supply systems, the California State Water Project, which serves central and southern California, recently increased its allocation of water to municipal and industrial users to 20 percent of average. The Los Angeles Aqueduct will produce only about one-half of its normal supply of water for the City of Los Angeles.

Conditions in the Colorado River System are such that a full Colorado River Aqueduct supply will be allowed. Other relief is being provided by water from the State water bank. Most of this water is from fallowing farm land or substituting ground water for surface water supplies.

These four water supply systems (CVP, Colorado River System, State Water Project and the Los Angeles Aqueduct) supply the vast majority of all surface water used in California. Groundwater normally supplies about 40 percent of California's total water needs. During periods of drought, the reliance on groundwater is greatly increased, resulting in substantial overdrafts of this resource. Actions are being studied by Reclamation to enhance recovery of ground and surface supplies of water. Activities such as groundwater replenishment through artificial recharge or an in-lieu operation, as well as continued conservation are needed to allow supplies to recover to mitigate future droughts.

A more complete summary of drought conditions can be found in our monthly report entitled, "Water Supply Conditions for the Western States, May 1991." I would like to submit a copy of that report for the record.

Mr. Chairman, the Bureau of Reclamation's drought management efforts for the past several years, as well as reviews of previous drought mitigation activities, clearly reinforce the need for additional authority for the Secretary of the Interior. Such authority would allow the Bureau of Reclamation, in cooperation with States and local agencies, to respond more effectively to drought conditions both on and off reclamation projects.

S. 586, introduced by you, Mr. Chairman, at the request of the Administration, would grant this authority. First, S. 586 would grant broad authority to the Secretary, acting pursuant to the Federal reclamation laws, to plan ahead in concert with other Federal agencies, States, local governments, Indian tribes, other public and private entities, and individuals for the use of water resources in times of drought. This would be permanent authority and would significantly aid in institutionalizing drought planning, management, and recovery. We have learned from past experience that stop-gap temporary authority may be too little and too late to adequately address the impacts of temporary drought conditions and the problems they generate. Given the diminishing margin of reserve between water supply and demand, such authority will

become increasingly important in the future. Our report "The Reclamation States Drought Assistance Act of 1988, Report to the President and the Congress, February 1991" underlined this need. I would also like to submit a copy of that report for the record. Second, the Secretary of the Interior must be able to fully utilize the physical resources of the water resource development projects of the Bureau of Reclamation to address drought conditions. A significant portion of the water supply infrastructure of the Western States was built and is operated and maintained by Reclamation. The use of these facilities to reduce the impacts of drought conditions is crucial to the protection of the Federal investment in the projects, the ability of State and local authorities to manage water supplies in times of scarcity, and the well-being of water users and instream flow needs.

S. 586 would authorize the Secretary to enter into temporary contracts—not to exceed one year—to make available water and the use of facilities at Federal reclamation projects for the storage or conveyance of project or non-project water, for use both within and outside authorized project service areas.

As you know, Mr. Chairman, similar authority is provided under the Warren Act of 1911 for the use of project facilities. However, the authority granted under S. 586 is much broader.

For example, the Secretary would be able to contract for water or use of facilities with public or private entities which want to make water available for fish and wildlife purposes.

It is important to recognize that the impacts of drought conditions are far reaching. This can include individual business failures and extend to broader reductions in economic and employment opportunities, fish and wildlife, and other instream needs such as recreation, hydroelectric power generation, and navigation. Water quality, fish and wildlife populations and habitat may be severely stressed by drought and take years to recover. In addition to authorizing the Secretary to enter into contracts for the use of water or facilities for fish and wildlife related drought mitigation, S. 586 also authorizes the Secretary to make water available on a temporary basis for reducing the impact of drought on fish and wildlife.

Mr. Chairman, the Bureau of Reclamation is using its existing authority to the extent possible in responding to the drought conditions. The Dire Emergency Supplemental Appropriations Act of 1991 provides $25 million to meet the emergency needs for areas stricken by drought. Reclamation has canvassed its field offices in the 17 Western States and has identified emergency relief projects which can be undertaken. This ongoing review of these suggested projects includes close coordination and cooperation with fish and wildlife interests and the Fish and Wildlife Service so as to assure full consideration and concern for projects that would alleviate drought-related impacts on fish and wildlife resources. S. 586, Mr. Chairman, would grant the additional authority needed to undertake several of the projects proposed for funding from the supplemental appropriation.

Finally, with respect to the pay-as-you-go provisions of the Omnibus Budget Reconciliation Act of 1990, preliminary Office of Management and Budget scoring estimates of the budgetary impact of

S. 586 indicate that receipts as a result of section 3(b)(1) of the bill may increase by less than $1 million per year.

S. 404 seeks to expand the purposes for which the Secretary of the Interior may enter into contracts pursuant to the Warren Act to include "domestic, municipal, fish and wildlife, and other beneficial purposes," as opposed to the current authority which provides for irrigation water supplies only. The authority granted by the bill would be limited to contracts with political subdivisions in the State of California and limits use of facilities for expanded purposes to the Central Valley Project, Cachuma Project, and the Ventura Project, all in California.

The authority contained in S. 404 is not temporary, nor contingent upon drought conditions. It does provide for greater use of existing facilities and enhances water management capabilities. It is understood that the bill is uniquely designed to be geographically restrictive, but it is recommended that it be amended to permit contracting with other entities in addition to political subdivisions of the State.

The bill should be amended to clarify that the rate charged by the Secretary should provide for operational costs as well as construction and maintenance costs as currently provided in the Warren Act.

Mr. Chairman, your Committee has two other bills before it relating to drought problems in the West. They are S. 711 and H.R. 355.

Although some of the same authorities are found in these two bills, the Administration supports the legislation drafted by the Department of the Interior as embodied in S. 586.

S. 711 would provide additional substantive permanent drought authority. The bill raises several PAYGO issues. These include Section 9 which would allow the Secretary to defer payment on obligations under Federal Reclamation law contracts or loans and Section 16, establishing a Reclamation Drought Response Fund.

In addition, Section 11(a) would exempt actions taken in response to drought from the National Environmental Policy Act (NEPA) and the Federal Paperwork Reduction Act (FPRA). Existing regulations adequately provide for expedited consideration in emergency situations. Thus, an exemption is unwarranted.

The Administration opposes H.R. 355 unless some of its provisions are deleted or amended. These include Section 204 and 307, dealing with a review period for certain drought contingency plans and requiring the Secretary submit concurrently a report to the Congress and the President. These sections violate the separation of powers by subjecting Executive Branch action to veto or approval by committees of the Congress and by infringing on the President's authority to control the presentation of Executive Branch views to the Congress.

Section 304 of H.R. 355 would authorize $12 million for design and construction work of a temperature control device at Shasta Dam in California. The Administration recommends that this provision be deleted pending the filing of the Planning Report and Final Environmental Impact Statement on the device with the Environmental Protection Agency, scheduled for May 30, 1991, and the Record of Decision, scheduled for July 31, 1991.

In addition, Sections 101, 102, and 103 of H.R. 355 need clarification as it relates to the Secretary's authority to acquire and provide water for purposes not recognized as beneficial in some States, a better definition of which water-saving actions go beyond efficiencies already required by contract, and which water is available for Secretarial purchase.

The legislation should clarify that cost-sharing requirements for the construction of salt water barriers in the Sacramento-San Joaquin Delta, California, should be consistent with Administration policy.

Exemption of temporary drought actions from the Federal Paperwork Reduction Act is unnecessary and an undesirable precedent. Existing regulations adequately provide for expedited consideration in emergency situations.

Mr. Chairman, S. 586 proposes a fiscally sound and environmentally responsive solution to the need of the Secretary of the Interior for permanent authority to better respond to future drought conditions.

The bill provides a reasonable and workable supplement to existing authority without an excessive burden on the taxpayer and with full recognition of both the temporary nature of drought and the need for permanent authority to better respond to temporary drought conditions.

We urge the adoption of S. 586.

That concludes my statement. I would be pleased to answer any questions you or members of the Committee may have.

TESTIMONY OF GARY EDWARDS, ASSISTANT DIRECTOR FOR FISHERIES, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Thank you, Mr. Chairman, for the opportunity to appear today. I will address the drought as it relates to fish and wildlife issues, and Commissioner Underwood will address the Department's views on the legislation.

This is the fifth consecutive year of dry conditions, and four out of the five have been classified by the Bureau of Reclamation as "critically dry"—a designation given when only about half the normal precipitation occurs. While March was abnormally wet, and improved water conditions substantially, we are still facing severe drought conditions.

The drought is statewide, but the fish and wildlife problems are most evident in the Central Valley and the Sacramento-San Joaquin Delta. That is the heart of California's water system, where water is stored and used, as large quantities are diverted for both agricultural and municipal/industrial uses.

The short-term and long-term impacts have, in essence, merged because of the duration of this event. However, in the short term, streamflows are diminished; lake levels are low, permanent wetlands have become desiccated or reduced in size, and some seasonal wetlands may fail to be replenished at all. Uplands have become more dry and are vulnerable to wild fires. In the long term, water-oriented species, some of which are already endangered, are being severely impacted; anadromous fish populations are declining, and

wetland and riparian systems are reduced in value, thereby support fewer migratory birds.

Further, because of short water supplies, populations and habitats of most water-oriented wildlife were already in decline when the drought commenced. Central Valley National Wildlife Refuges, which have firm surface supplies amounting to less than 10 percent of their water need, have been unable to provide the wintering habitat essential to maintenance of Pacific Flyway populations. Wintering populations have already declined from long-term average of 10–12 million waterfowl annually just 10 years ago, to fewer than 2 million last winter.

On average, Central Valley salmon and steelhead streams have less than 40 percent of their estimated required flow. Populations have plummeted, and the winter-run chinook salmon is already listed as a threatened species. Fall-run chinook salmon, which had spawning runs in excess of 600,000 fish valley-wide in the early 1950's, were down to less than 100,000 fish in 1990.

It must be recognized that fish and wildlife are already stressed with four years of drought. The following are some of the more critical implications of continued drought:

Inadequate water for food production and fall flood on the few remaining valley wetlands, including our National Wildlife Refuges, will further affect flyway waterfowl. Unless adequate wintering habitat is provided, birds that survive will return to northern breeding grounds in poor condition and populations may further decline.

Both nesting and wintering bald eagles may be affected by reduction in reservoir pools statewide.

The drying up of riparian zones will adversely impact populations of the endangered Least Bell's Vireo and their proposed critical habitat.

Fall-run chinook salmon in the San Joaquin River system have declined precipitously in recent years—from a recent high of 70,000 spawners in 1985, to 15,000 in 1987, 3,000 in 1989, and 600 in 1990. This is due primarily to insufficient spawning attraction flows, spring outmigration flows, and extensive Delta pumping during times of water shortage. If adverse conditions continue, significant loss of the production of the 1990 fall run and the 1991 spawning run are predicted. Since salmon spawn on a 3-year cycle, this essentially means that only the progeny of the meager 1989 run, and whatever survivors there may be for 1990 and 1991, may be left to sustain the entire basin population.

Water in many Central Coast streams supporting steelhead trout has not flowed to the sea in 5 years, resulting in loss of several year-classes of these fish, which have a 3-year life cycle.

The threatened winter-run chinook salmon numbered 500 adults in 1989 and only 441 in 1990. Preliminary information indicates that the 1991 run may be significantly less. Because of summer water temperature impacts on egg development, the status of these fish will worsen because of the drought, perhaps even to the point of extinction.

Lethal high water temperatures can be expected to adversely impact the early spawning component at the fall run of chinook salmon—the largest number and most valuable commercially of Sacramento River salmon.

Spring-run chinook salmon in the Sacramento River system are at dangerously low levels and at risk due to high water temperatures. Continued drought will exacerbate their condition, possibly leading to a threatened or endangered status. The prognosis for their survival is poor.

Delta smelt, tidewater goby, and other fish species being considered for listing under the Endangered Species Act are being adversely affected. Because the Delta smelt has a life cycle of only one year, and has declined drastically in recent years, it could face extinction.

Survival of salmon smolts migrating through the Delta is at an all-time low due to reduced inflows and continuing diversions and exports. Delta springtime outflows are expected to be much lower than the levels that have been identified for reasonable smolt survival.

Production of striped bass in the Sacramento-San Joaquin estuary is at an all-time low and expected to worsen. The index of young-of-the-year striped bass last year was 4.6, compared to an expected average of 79. Adult populations are already only one-fourth to one-third what they were 20 years ago.

Water temperature below major water project reservoirs such as Folsom, Oroville, and New Melones have been marginal to lethal for salmon, and will worsen due to low storage levels. In 1990, salmon and steelhead runs in the American River were severely depressed because of low flow and temperature problems. Entire year-classes may be lost due to continued drought conditions in 1991.

The 5-year drought has adversely affected the native annual and short-lived herbs of California, including the ten species already listed and the numerous high-priority candidate plants form Central Valley. The drought has effected a reduction in annual seed production, which reduces the "seed bank" that maintains these fragile populations.

This reduction in vegetation, especially seeds, has adversely impacted the three federally listed kangaroo rats and numerous other small mammals. Some kangaroo rat populations have collapsed in the southern San Joaquin Valley. These losses of small mammals have adversely affected the listed San Joaquin kit fox, which preys primarily on small rodents. The blunt-nosed leopard lizard has been adversely impacted by reduced availability of food as well.

The Service has been petitioned to list the giant garter snake, a species already listed as threatened by the State of California. This aquatic species, dependent on seasonal and permanent sloughs and slow-moving creeks, appears to be suffering widespread habitat losses from the drought.

Invertebrate populations are being severely impacted. The endangered California fresh water shrimp is suffering critical loss of habitat because of reduced stream flow. Almost all of the 9 species of endangered butterflies in California are experi-

encing declines in numbers to the verge of extinction because the drought has virtually eliminated growth of their host plants. Vernal pool species, such as the candidate fairy shrimp, are undergoing major habitat loss as desiccated vernal pool areas are also reduced. The valley elderberry longhorn beetle, a species dependent on riparian vegetation, is declining as efforts to cope with the drought cause habitat loss.

It should be emphasized that the Bureau of Reclamation has cooperated substantially in the past four years in mitigating some of the impacts of this lengthy drought. For the last three years, the Bureau has foregone significant power generation at Shasta Reservoir to provide cooler water in releases for spawning and egg incubation of the winter-run chinook salmon. They have also provided water in the spring to encourage migration of winter-run chinook salmon spawners into upper reaches where acceptable water temperatures may be more readily provided. In addition, the Bureau has provided releases to assist downstream juvenile migrants and has operated the Delta Cross Channel gate to benefit smolts released from Coleman National Fish Hatchery.

To compensate wildlife refugees not having firm water supplies, the Bureau has made substantial deliveries of water in each of the last four years. While these actions have been positive, even more assistance will be needed this year in order to keep resources viable for recovery once the drought ends.

On an especially positive note, Secretary Lujan on May 8 directed the release of between 240,000 and 340,000 acre-feet of water into the Trinity River for fisheries purposes this year. He also directed that at least 340,000 acre-feet be released in future years.

Our Sacramento Field Office is actively participating in the State Water Resources Control Board's drought emergency hearings, and our Sacramento Field Office Supervisor was selected by the Governor's Drought Action Team chairman to serve as an invited participant. In these two forums, we provide technical advice as to the consequences of the drought and identify measures that can ameliorate impacts to fish and wildlife.

In the short term, we believe that fish and wildlife resources can benefit from measures such as rescheduling of export pumping, low- and high-level power bypassing releases to minimize water temperature adverse to fish, Delta Cross Channel gate operations, and greater use of rechargeable ground water resources.

Our Coleman National Fish Hatchery on Battle Creek, a tributary to the Sacramento River, has done everything possible to minimize losses of fall-run chinook salmon and propagate the threatened winter-run chinook salmon. The Hatchery may prove to be a vital sanctuary for Sacramento River winter-run and fall-run chinook; and Battle Creek, which has a naturally cool water supply, will also be critical for the fall-run chinook.

Long-term resource management could be improved by changing the present allocations of supplies at Federal reservoirs to meet the needs of fish and wildlife. During the first four years of this 5-year drought, deficiencies have been imposed on instream flows and out-of-stream water supplies for wildlife. In the long term, we are working with the Bureau of Reclamation to evaluate possible improvements, such as the Shasta Dam temperature control device,

full correction of the upstream and downstream fish passage problems at Red Bluff Diversion Dam, improvements to the fish trap at Keswick Dam, proper screening of the Glenn Colusa Irrigation District pumps, and to obtain firm water supplies for National Wildlife Refuges.

It should be emphasized, however, that the Central Valley Project is a key element in the statewide solution. The Project has the water rights and physically controls much of the water in the Central Valley. In large part, solutions to water temperature problems for salmon and refuge water supply needs will involve the operations of the Central Valley Project.

Fish and Wildlife have suffered through four years of drought already. Deficiencies were imposed on fish and wildlife starting in 1987 while most other users did not incur deficiencies in surface supplies until 1990. In a nutshell, fish and wildlife need:

(1) About 400,000 acre-feet of surface water for Central Valley Federal and State waterfowl refuges. This is in essence our only consumptive need.

(2) Reservoir storage levels and release-level operations that protect salmon from lethally warm water temperatures during spawning and egg incubation. In this fifth year of drought, water temperature is of paramount importance over flow considerations. For much, if not most of the year, instream flows will be only those minimums necessary to protect water quality for Delta export of municipal supplies. Water in the Central Valley will not be "wasted to the sea" for fishery purposes. Further carryover storage needs in reservoirs may only be prudent for contingency in case the winter of 1991–1992 is dry.

(3) Given these two requirements, utilization of the flexibility in water supply project operations to avoid adverse impacts to the extent possible will be necessary. In a year with so little water, the available reservoir, canal, and pumping plant capacities can and should be used to schedule needed deliveries in the least damaging pattern. Innovative approaches to the use of a preciously short supply of water must be explored by every user.

We are actively working with the Bureau of Reclamation to provide needed supplies for fish and wildlife within the context of the many competing water uses.

Thank you again, Mr. Chairman, for the opportunity to present our views. I will be pleased to respond to any questions you may have.

STATEMENT OF DANIEL A. SUMNER, DEPUTY ASSISTANT SECRETARY FOR ECONOMICS, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before the subcommittee to discuss the impact of the drought on California agriculture and the types of measures that may facilitate better management of scarce water resources and mitigate the effects of the drought.

THE DROUGHT AND AGRICULTURE

Many western states continue to experience drought conditions. California is in its fifth consecutive year of below average seasonal precipitation. Five consecutive drought years is a rare occurrence in California. The present situation is only the second occurrence this century of four or more consecutive drought years. Even though water reservoir levels increased during March because of above-average precipitation, levels remain far below normal and planned agricultural water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP) and the California State Water Project were not changed.

California will begin the 1992 season with even lower water reservoir levels than in 1991. And a sixth consecutive drought year while not likely is a possibility. It is important that careful contingency planning and preparations continue.

The USDA surveyed farmers during March 1–15 on their 1991 prospective plantings. The survey showed that nationally farmers indicated 1991 rice acreage would be down 3 percent from last year, while California farmers planned to reduce acreage by 23 percent. Nationally, cotton producers expected to increase plantings by 13 percent, while California cotton producers showed a 14 percent decline. Nationally, sugar beet producers indicated no change in the amount of acreage planted from 1990, but 13 percent lower acreage in California for 1991. The first estimate of actual crop plantings for 1991 will be released on June 27.

The extensive investment by both private individuals and the public sector in surface water storage, surface water conveyance, and ground water wells have mitigated, to some extent, the effects of a prolonged drought on most California irrigators. In 1990, the Central Valley Project delivered 5 million acre-feet of agricultural water supply, instead of 7.1 million acre-feet—the average CVP supply. The State Water Project delivered 50 percent of normal agricultural water supply. Despite these reductions, irrigated acreage in the state was less than 3 percent (194,000 acres) below normal.

This year's drought is more severe than during the previous four years. The drought is seriously affecting public sector water supplies for irrigation from the Central Valley Project and the California State Water Project. Private surface water and ground water supplies are also reduced. Flexibility in being able to shift between different water supply sources is part of the reason the system has performed as well as it has during this and earlier severe water shortages. However, in some areas, ground water supplies are being overdrawn, limiting water use and increasing the likelihood of ground water quality problems.

Overall the water system has done well but farmers in some regions may experience problems this year. This applies, for example, to those citrus growers who, in addition to experiencing diminished water supplies, faced damage in last winter's freeze.

Many areas that have been hit by the drought also have local economies that are highly dependent on agriculture. The drop in agricultural production can have widespread economic consequences in these areas, especially among processing, transportation, and farm input businesses. Workers employed on a perma-

nent and temporary basis in these industries and in agricultural production also face losses.

USDA DROUGHT RESPONSE

The USDA has established a California Drought Response Office to develop drought action plans, coordinate the response of its agencies to the drought, and provide information to residents of California to help them deal with the drought. The coordinator of the Drought Response Office is also a member of the Governor's Drought Action Team and represents USDA in meetings with statewide water associations. USDA agencies have increased their efforts to assist California farmers. For example, the Soil Conservation Service in California has stepped up technical assistance to operators of irrigated cropland.

The Commodity Credit Corporation (CCC) has also responded to the many producers in California who have had their water supply reduced. Under 1991 farm program provisions, the acreage a producer is prevented from planting to a program crop is treated as if it were planted for the purpose of m intaining the crop acreage base. In the case of irrigated crops the procducer is given prevented planting credit for the percentage reduction of his irrigation supplies attributable to water reductions by actions of a public authority. This prevented planted acreage credit may be used by producers to meet minimum planting requirements to receive deficiency payments under the 50–92 program for cotton and rice. Wheat and feed grain producers may use idle base acreage, including that prevented from plantings to qualify for payments under the 0–92 program.

Other CCC actions include extending the date producers would normally have to certify the acreage being planted to small grains in order to qualify for farm programs. The Emergency Feed Program has been approved for four California counties. In addition, haying and grazing of land devoted to conserving uses under the 1991 farm programs may be made available by CCC in the event of a substantial loss of feed production in a county.

IRRIGATION ISSUES

It is important that Federal water reclamation facilities be fully utilized in responding to temporary drought conditions. Flexibility to store and convey water is important for agriculture and other water users. Experience with the California Water Bank indicates the potential effectiveness of increase water marketing for providing drought relief and improving efficiency in water use.

The State Water Bank is now closed to new water sellers. We understand that transactions completed have resulted in 368 separate purchases involving a total of about 700,000 acre-feet of water. We understand that as of late May negotiations are continuing for the purchase of 239,000 acre-feet of water. Total water purchases by the state are expected to exceed 800,000 acre-feet. Participation in the water bank has been concentrated in the Sacramento/San Joaquin Delta area and Yuba and Feather River basins, with these areas supplying approximately 80 percent of total water. Roughly half of the water was made available by fallowing 136,000 acres of

agricultural land. Most of this land would have been used to produce corn (56,500 acres) and wheat (36,000 acres). Other crop land idled for the water bank includes that intended for pasture, alfalfa, sugar beets, rice, tomatoes, dry beans and sunflowers.

The water bank appears to have been successful in moving water from areas with greatest water supplies to those with greatest water deficits and to crops that had the highest payoff to water use. In addition, the 50–92 and 0–92 farm program provisions which allow producers to receive deficiency payments when land is idled or prevented from planting have facilitated water transfers to other uses.

S. 586 provides the measures needed for Federal and state agencies to work cooperatively to reduce the impacts of the drought. Among other things, it provides for drought contingency planning measures that would aid in drought management and water conservation. It would also provide greater flexibility in the use of Bureau of Reclamation facilities to store and convey project and non-project water to address drought conditions.

Western irrigated agriculture is an extremely productive and efficient provider of food and fiber for the Nation and foreign consumers. This productivity is in part a return on the public's investment in the irrigation infrastructure.

A long term solution to drought mitigation and inefficient water use should incorporate measures that improve water marketing. This may make water available for high value uses within agriculture and outside agriculture. Opportunities for voluntary water transfers would increase grower incentives to manage water more effectively and to adopt more efficient irrigation technology.

ADDITIONAL VIEWS OF SENATOR SEYMOUR

I am pleased that this Committee has addressed the emergency conditions existing in California, and in many of the other western states, caused by this severe drought. I am especially pleased that this Committee has chosen to separate this issue from other pending water legislation in order to expedite the passage of this much needed legislation.

I am confident that the bill being reported out of this Committee will provide the Secretary of the Interior with sufficient authority not only to help alleviate the devastating impacts of this current drought, but also to be better prepared to address future droughts. This bill preserves the most important provisions of S. 711 which I introduced on March 20th.

Specifically, this bill:

Provides permanent authority to the Secretary of the Interior to act in the face of drought. This is a significant departure from the piecemeal approach to emergency drought legislation which we have had in the past.

Provides for low-cost government loans for construction, water management and conservation activities, and for the purchase and transportation of water to offset the impacts of the drought.

Allows farmers to defer payments of loans without penalty or additional interest because of financial hardship due to drought;

Amends the Warren Act of 1911 to allow the use of excess capacity in Federal facilities for the transportation of project and nonproject water for municipal, industrial and other purposes. This is especially important for coastal communities in California such as Santa Barbara and Contra Costa.

Provides for the purchase and transportation of water for fish and wildlife on a nonreimbursible basis.

Allows the Secretary to participate with the State in constructing temporary barriers to prevent saltwater intrusion into the Sacramento-San Joaquin Delta. These barriers are critical to the preservation of water quality for drinking, industry, agriculture and critical fish and wildlife habitat.

Authorizes the completion of design and specifications for the Shasta Dam temperature control device, as well as the construction of facilities needed to attach the device to the Dam. The construction of these facilities now, while the reservoir levels are low, will save approximately $5 to $8 million dollars in the long run.

In my view, the net effect of this legislation is to allow the Federal government to be an helpful partner to the State during this and future droughts.

JOHN SEYMOUR.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes no changes in existing law made by the act, H.R. 355, as ordered reported.

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